In the High Court of Judicature at Madras

Dated: 05/12/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Criminal Revision Case No.76 of 2001
and
Crl.M.P.No.461 of 2001

Seerangan .. Petitioner

-Vs-

Selvi .. Respondent

Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure against the Order passed by the learned Judicial Magistrate No.II, Metturdam, Salem District dated 14.12.2000 made in M.C.No.4 of 1992.

!For petitioner : Mr. V. Sairam

^For respondent : Mr. P. Jagadeesan

:ORDER
The criminal revision petition is directed against the order of the learned Judicial Magistrate No.II, Metturdam, Salem District dated 1 4.12.2000 made in M.C.No.4 of 1992. Against the order granting maintenance at the rate of Rs.400/- per month in favour of the wife, husband has preferred the above revision.

2. According to the respondent herein - petitioner in M.C.No.4 of 1 992, she married the petitioner herein on 29th Avani, 1990, according to their caste customs at Bhavani Kuduthurai Temple. From the said date, they lived together till June, 1991, when she was driven from her matrimonial home to get dowry from her parents. After panchayat, she was taken back by her husband on 08.10.1991 and again she was driven on 11.10.1991 and from there onwards, according to her, she is living separately. Since she is not possessed of any property and unable to maintain herself, she filed M.C.No.4 of 1992 for claiming maintenance at the rate of Rs.500/- per month.

3. The said petition was resisted by the petitioner herein - respondent therein, by filing a counter statement. It is stated that no marriage had taken place between him and the respondent herein and there is no relationship of husband and wife. He also denied the panhcayat said to have taken place. It is stated that he already married to one Mani @ Sakunthala

and even now he is living with her. He further stated that out of their wedlock, a daughter by name Sudha was born to them and she is nine years old. According to him, the respondent was his kept mistress for a period of 1 « years and he denied all other allegations made against him.

4. Before the Court below, the wife herself was examined as P.W.1 and three more witnesses as P.Ws.2 to 4 and also marked Exs.P.1 to P.4 in support of her claim for maintenance. On the other hand, the husband himself was examined as R.W.1 and one Krishna Pandiyan, Executive Officer of Sangameswarar Temple was examined as R.W.2 and marked Exs.R.1 to R.7 in support of his defence.

5. The learned Judicial Magistrate, on appreciation of oral and documentary evidence, after holding that there is no acceptable evidence regarding the first marriage with Mani @ Sakunthala, the petitioner therein is wife of the respondent therein and she is unable to maintain herself, granted maintenance at the rate of Rs.400/- per month. Questioning the said order, the husband has preferred the present revision.
6. Heard the learned counsel for the petitioner as well as respondent.

7. Mr. V. Sairam, learned counsel for the petitioner, after taking me through the oral and documentary evidence and the impugned order of the learned Magistrate would contend that inasmuch as the husband has satisfactorily proved his marriage with Mani @ Sakunthala and while the said marriage was in subsistence, the alleged second marriage with the respondent herein is void and nullity, accordingly, she is not entitled maintenance.

8. On the other hand, Mr. P. Jagadeesan, learned counsel for the respondent herein - wife would contend that in the absence of any positive evidence regarding the earlier marriage with Mani @ Sakunthala and in view of the fact that her marriage with the petitioner herein has been established, she was deserted and unable to maintain herself, the learned Judicial Magistrate is fully justified in granting maintenance.

9. I have carefully considered the rival submissions.
10. The only point for consideration in this revision is, whether the petitioner herein - husband has established his marriage with Mani @ Sakunthala, prior to his marriage with the respondent herein?

11. If it is established that there is a valid marriage between him and the said Mani @ Sakunthala, undoubtedly, the respondent herein cannot get any maintenance, because her marriage with the petitioner herein is a nullity. This is clear from the following decisions in the case of Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav and another reported in 1988 Supreme Court Cases (Cri.) 182; Khemchand Om Prakash Sharma vs. State of Gujarat and another reported in 2000 Supreme Court Cases (Cri.) 748; Gnanaselvam vs. C.K. Madhavan reported in 2 002 (1) L.W. (Crl.) 305. Let me consider the oral and documentary evidence relied on in support of the said claim. Except his oral evidence as R.W.1, no other person, particularly elderly person or who participated in the marriage between him and Mani @

Sakunthala was examined. R.W.2 - Krishnapandian is nothing to do with the first marriage and he is an Executive Officer of Sangameswarar Temple, Bhavani and he was examined only to show that the second marriage was not performed with the respondent herein on the date and time as alleged by her.

12. Learned counsel for the husband has very much pressed into service, the Voters List - Ex.R.3. No doubt, in the 1984 Voters List, there is a reference to the effect that Sakunthala is the wife of Sreerangan (petitioner herein). The learned Magistrate, after noting that the said Voters List has not been authenticated by the Officer competent, refused to rely on the same. In the light of the above contention, I have also verified Ex.R.3. Though the name of Sakunthala is mentioned as wife of Sreerangan, as rightly observed by the learned Magistrate, except the printed sheets, the same have not been certified as true copy or authenticated by the Officer concerned or a Revenue Officer, who is authorised to certify the same. Accordingly, I am of the view that the learned Magistrate is right in rejecting the said document.

13. The other document relied on by the learned counsel for the petitioner is Ex.R.4 - Family Card, wherein there is a reference to the name of the parents and his wife. A perusal of Ex.R.4 shows that " Mani" has been described as wife of the petitioner - Sreerangan. There is no reference to the alias name and the name Sakunthala has not been mentioned in Ex.R.4. Though in the evidence, R.W.1 has stated that his first wife Sakunthala is called "Mani", the same has not been stated so in his counter statement, nor found in Exs.R.3 and R.4. In such a circumstance, the learned Magistrate is perfectly right in rejecting Exs.R.3 and R.4 and holding that there is no acceptable evidence to prove the marriage between the petitioner herein and the Sakunthala.

14. I have already referred to the fact that there is no one who participated in the marriage was examined on the side of the petitioner. One more aspect is to be noted that though the marriage is said to have taken place between them and a Daughter by name Sudha was born to them, her name does not find place either in Exs.R.3 and R.4. The explanation that he failed to inform the name of their daughter to the concerned authorities, cannot be accepted.

15. Mr. V. Sairam, has also very much relied on the report and Charge Sheet - Exs.R.5 and 6. It is true that on the complaint by the respondent herein - Inspector of Police, Sankari charge sheeted the petitioner herein and the matter was seized by the Judicial Magistrate, Sankari in C.C.No.87 of 1993. Though there is a reference regarding the marriage between the petitioner herein and Sakunthala, as rightly stated by the learned counsel for the respondent herein that a statement recorded by the police during the investigation is not at all admissible in evidence and the proper procedure is to confront the witnesses with the contradictions when they are examined and then ask the Investigating Officer regarding those contradictions. It is settled law that the statement recorded under Section 116 of the Criminal Procedure Code shall not be used for any purpose, except a directory evidence

in the manner prescribed under Section 162 (1). It is clear from the decisions of the Supreme Court in the case of Podda Narayana and others vs. State of Andhra Pradesh reported in A.I.R. 1975 Supreme Court 1252 and Baldev Singh vs. State of Punjab reported in 1990 (4) S.C.C. 692. Even otherwise, it is not disputed that the criminal proceedings initiated against the husband has been quashed by this Court. In such a circumstance, the statement of the respondent recorded by the police under Section 161 Cr.P.C cannot be helpful to the stand taken by the petitioner herein.

16. Further, the Magistrate in a petition filed under Section 125 Cr.P.C for maintenance, is not competent to decide the validity of marriage like a civil Court. If the Magistrate has any doubt, as observed in the case of Rudramma vs. H.R. Puttaveerabhadrappa reported in 1987 Crl. L.J. 677 (Karnataka High Court), the proper course is to grant maintenance, leaving husband to establish invalidity in competent Court. Further, in a petition filed for maintenance, if the husband takes a plea that there is a first marriage with another lady and the present claim is not maintainable, the burden is on the husband and it is for him to satisfactorily prove the subsistence of earlier marriage, which is legal and valid. Section 125 Cr.P.C. is meant to achieve a social purpose and it provides speedy remedy to the deserted wife. In the light of the above object and in view of the fact that the petitioner - husband, miserably failed to satisfactorily prove the subsistence of earlier marriage, which is legal and valid and of the fact that the respondent herein has established that her marriage with the petitioner by acceptable evidence, I am in agreement with the conclusion arrived at by the learned Magistrate. Further, the defence of the husband that while respondent herein was doing cooli work, he had an intimacy with her and kept her for a period of 1 « years cannot be accepted and it is also improbable. I have already referred to the fact that no other person from his place was examined in support of his claim and the same was rightly rejected by the learned Magistrate.

17. Coming to the quantum, it is seen from the evidence of P.W.1 that her husband is having agricultural land to the extent of 7 acres and getting Rs.5,000/- per month. Even if the petitioner herein is treated as a cooli, as rightly observed by the learned Magistrate, he would get Rs.1,500/- per month. Since it is the case of the wife that she is not possessed any property and not getting any income, undoubtedly, she is to be maintained by her husband. In such a circumstance, the grant of Rs.400/- towards maintenance cannot be said to be either excessive or unreasonable.

In the light of what is stated above, I do not find any valid reason to interfere with the order of the learned Judicial Magistrate. Consequently, the revision fails and the same is dismissed.
In view of the dismissal of the main revision, connected Crl.M.P., is also dismissed.

Index:Yes
Internet:Yes
kh

To
1. The Judicial Magistrate No.II
Mettur Dam, Salem District (with records if any)

2. The Judicial Magistrate No.II
Mettur Dam through the Chief Judicial
Magistrate, Salem District.